

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1180 of 1991

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R.P.BAROT

Versus

H.M.BAROT

Appearance:

MR. R.M. Chhaya, Advocate, with MR ND NANAVALI for Petitioner
Respondent served.

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 09/08/96

ORAL JUDGEMENT : (Per G.D. Kamat, C.J.)

Defendant in Civil Suit No.167 of 1983, being aggrieved by the order of rejection of an application for amendment of the written statement, has challenged the same in the present Civil Revision Application. The

respondent instituted a suit against the petitioner for eviction from part of the house situated at Street No.12, Mahendrapara, Morbi. It was averred in the suit that the deceased husband of the petitioner Rambhai Pathabhai Barot was the licensee in respect of those premises and the licence had been duly terminated by giving a notice.

Suit was contested by the petitioner. In that a defence was that her father-in-law was the owner of the entire house and she has been in occupation of the part of the house in her own right and that, at any rate, she is not the licensee of the respondent-original plaintiff. Some time after the evidence was recorded in the suit, an application was moved (Exhibit 104), seeking to amend the written statement. The written statement was sought to be amended on the averment that the father-in-law of the petitioner had, in fact, allowed the plaintiff, some time in the year 1949, to occupy the remaining part of the same house on a licence. A prayer was also made for a declaration that the respondent-original plaintiff is not the owner of the premises.

The learned trial Judge, by his order dated 19th September, 1991, rejected the amendment application on two grounds. The trial court, in the first instance, held that the amendment sought under Exhibit 104 does not relate to the same subject matter of the suit and being not connected with the subject matter, there was no question of allowing such a defence. The trial court also held that the amendment is liable to be rejected as the same was filed belatedly.

Mr.Chhaya, learned counsel appearing for the petitioner, says that the application for amendment could not have been rejected on the specious plea that the same attracted laches. He also contended that the eviction of the petitioner was sought from the part of the premises and when the petitioner raised a defence in a written statement that the respondent-original plaintiff is himself not the owner of the property and when the petitioner chose to amend the written statement that the respondent original petitioner was himself in occupation of part of the same house as a licensee of the father-in-law, the learned trial Judge could not have rejected the same as finally it related to one and the same subject matter and even if it is held that it is not so, it was connected with the original defence of the petitioner.

I am unable to accept the submission of the learned counsel that the rejection of the application for

amendment can in any manner be faulted with. It must be seen, in the first place, that the respondent instituted the suit against the petitioner seeking her eviction and restoration of possession of part of the house on the ground that her husband was the licensee and the licence has been terminated. It is, therefore, clear that the subject matter of the suit was the premises under the occupation of the petitioner. The petitioner, however, tried to amend her written statement, on the specious plea that the remaining part occupied by the respondent-original plaintiff was pursuant to a licence Agreement entered into by her father-in-law on the one hand and the respondent-original plaintiff on the other. In fact, the part in whatever fashion occupied by the respondent-original plaintiff had no connection with the premises in question. In fact, it is his claim that he has purchased the house under a registered sale deed from the father-in-law of the petitioner. It may be yet open for the petitioner to adduce evidence as to how the respondent-original plaintiff might be in occupation of the part of the house, as sought to be contended by her in her amendment. If the petitioner wants any declaration or eviction of the original plaintiff on any ground, it is open to her to file an appropriate suit. In so far as the rejection of the amendment on the ground that it was barred by laches does not survive once it is seen that the amendment sought had been rightly rejected.

In this view of the matter, nothing survives in this Revision Application. Same is rejected and Rule is discharged. Ad interim relief is vacated. Parties are, however, directed to bear their own costs.

(apj)